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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

A/R CAPITAL et al.,

Plaintiff, Cross-defendant and
Appellant;

CECIL MCNAB,

Cross-complainant and Appellant,

v.

GOOD NITE INN,

Defendant, Cross-defendant and
Respondent;

SANTA MONICA PROPERTIES, INC.,

Defendant, Cross-complainant and
Respondent.

B172009

(Los Angeles County
Super. Ct. No. BC277887)

ORDER MODIFYING OPINION
AND DENYING REHEARING
(NO CHANGE IN JUDGMENT)

THE COURT:

It is ordered that the opinion filed herein on January 19, 2005 be modified as follows:

1. On. Page 8, at the end of the text and citations concluding section 1(a) of the Discussion, add as footnote 7 the following footnote, which will require renumbering of all subsequent footnotes:

⁷. Disregarding the fact they previously misrepresented the state of the record to this court, A/R and McNab now argue we should have liberally construed their July 8, 2002 notice of appeal to include not only the nonappealable March 1, 2002 order dismissing their complaint but also the undisclosed March 8, 2002 judgment in favor of GNI. Although none of the parties properly presented the relevant information at the time, the record now before us establishes that notice of entry of the March 8, 2002 judgment was served by GNI on March 14, 2002. Accordingly, had we been told a judgment had in fact been entered on March 8, 2002 and liberally construed the notice of appeal to include it, as A/R and McNab urge, dismissal of the appeal still would have been required, albeit because the July 8, 2002 notice was untimely (Cal. Rules of Court, rule 2(a)(2) [notice of appeal must be filed on or before 60 days after the party filing the notice of appeal is served with a notice of entry of judgment]), rather than because A/R and McNab were attempting to appeal from a nonappealable order.

2. There is no change in judgment.

3. The appellants' petition for rehearing is denied.

PERLUSS, P. J.

JOHNSON, J.

ZELON, J.